

R E M A R K S

The courtesy of Ms. Oropeza in granting a telephone interview on November 15, 2004 to the undersigned is gratefully appreciated.

Pursuant to the telephone interview amendatory action has been taken in response to the Official Action of August 17, 2004 to overcome the rejections advanced therein and place the application into condition for allowance.

The Examiner has rejected Claims 74 and 80 as not being supporting by an enabling disclosure. These claims have been cancelled and thereby the rejection is no longer applicable.

The Examiner has rejected Claims 42-55, 57-59, 61-64, 69, 70 and 76 under 35 U.S.C. §103 as being unpatentable over Hofmann in view of Klicek.

Claim 56 is rejected under 35 U.S.C. §103 on this combination further in view of Eggers. Claim 60 is rejected under 35 U.S.C. §103 on Hoffman and Klicek, further in view of Mawad.

Claims 65-68, 71-73, 75, 77-79 and 81 are allowed.

Discussion of the Rejection

In rejecting the claims under 35 U.S.C. §103 over Hofmann in view Klicek, the Examiner cites Hofmann for disclosing an electroporation apparatus. Hoffmann indeed discloses an electroporation apparatus but is silent as regards controlling the voltage source of

the apparatus. The Examiner considers it obvious to control the voltage source in Hofmann on the basis of an impedance and monitoring feedback system in Klicek.

It is respectfully submitted that it would not be obvious to alter the voltage source in Hofmann based on the teachings in Klicek.

In this respect, Klicek discloses an electrosurgical unit intended to perform a cutting or coagulation treatment. Klicek monitors and controls the electrosurgical unit based on resistive load to the electrosurgical unit. As explained by Klicek in column 6, at line 66, the load is the impedance to energy applied to cut or coagulate tissue. The impedance varies with load and the intention is to prevent deeper incision than desired (column 2, lines 59-65).

In contrast to Klicek, the present invention applies voltage to electrodes within a restricted region of the tissue or organ to be treated and the impedance measuring means measures the impedance within the restricted region before, during and after application of high voltage pulses to the electrodes. Hence, it is the impedance in the tissue or organ that is being measured upon application of voltage thereto which determines the control of the high voltage generator. The invention does this for proper electroporation and Klicek provides no suggestion whatsoever to instruct one skill in the art to adapt the voltage generator based on the impedanced measure within the restricted region of the tissue or organ being treated within the electrodes.

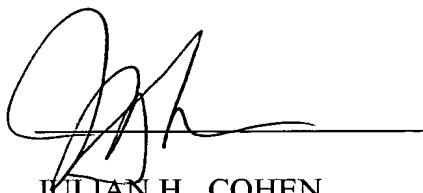
The Examiner has apparently not given any weight to the function of the various elements set forth and considers the claim limitations to amount to intended use limitations. In order to overcome this objection, the claims have been amended, where appropriate, to recite the elements as "means" with their associated function. The claims are

in accord with 35 U.S.C. §112 paragraph 6, and accordingly represent a patentable combination which carries out an unobvious result. There is nothing in the cited art to remotely suggest the control of the high voltage generator to control the pulses produced thereby on the basis of signals from the impedance measuring means measured within the restricted region of the tissue or organ.

Dependent Claims 82 and 83 have been added and are drawn to the measurement of the impedance by sensors (Claim 82) or wherein the impedance measurement serves to produce a substantially constant predetermined electric field in the restricted region of the tissue or organ (Claim 83).

On the basis of the above action and comments it is respectfully submitted that the application is now in condition for allowance and favorable reconsideration is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JH', with a long horizontal line extending to the right.

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